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Explanatory Memorandum](#)

**THIRTY-FIRST AMENDMENT OF THE CONSTITUTION
(CHILDREN) BILL 2012**

As initiated

ARRANGEMENT OF SECTIONS

Section

1. Amendment of the Constitution.
2. Citation.

SCHEDULE

PART 1

PART 2



**AN BILLE UM AN AONÚ LEASÚ IS TRÍOCHA AR AN
mBUNREACT (LEANAÍ), 2012**

Mar a tionscnaíodh

RIAR NA _NALT

Alt

1. An Bunreacht a leasú.
2. Lua.

AN SCEIDEAL

CUID 1

CUID 2



**THIRTY-FIRST AMENDMENT OF THE CONSTITUTION
(CHILDREN) BILL 2012**

BILL

entitled

AN ACT TO AMEND THE CONSTITUTION. 5

WHEREAS by virtue of Article 46 of the Constitution any provision of the Constitution may be amended in the manner provided by that Article:

AND WHEREAS it is proposed to amend the Constitution:

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS 10
FOLLOWS:

Amendment of the
Constitution.

1.—The Constitution is hereby amended as follows:

- (a) section 5 of Article 42 of the Irish text shall be repealed;
- (b) section 5 of Article 42 of the English text shall be repealed;
- (c) the Article, the text of which is set out in *Part 1* of the 15
Schedule, shall be inserted after Article 42 of the Irish
text;
- (d) the Article, the text of which is set out in *Part 2* of the
Schedule, shall be inserted after Article 42 of the
English text. 20

Citation.

2.—(1) The amendment of the Constitution effected by this Act shall be called the Thirty-first Amendment of the Constitution.

(2) This Act may be cited as the Thirty-first Amendment of the Constitution (Children) Act 2012.



**AN BILLE UM AN AONÚ LEASÚ IS TRÍOCHA AR AN
mBUNREACTH (LEANÁI), 2012**

BILLE

dá ngairtear

5 **ACHT CHUN AN BUNREACTH A LEASÚ.**

DE BHRÍ gur cead, de bhua Airteagal 46 den Bhunreacht, foráil ar bith den Bhunreacht a leasú ar an modh a shocraítear leis an Airteagal sin:

AGUS DE BHRÍ go bhfuil beartaithe an Bunreacht a leasú:

10 **ACHTAÍTEAR AG AN OIREACHTAS AR AN ÁBHAR SIN
MAR A LEANAS:**

1.—Leasaítear an Bunreacht leis seo mar a leanas:

An Bunreacht a
leasú.

(a) aisghairfear alt 5 d'Airteagal 42 den téacs Gaeilge;

(b) aisghairfear alt 5 d'Airteagal 42 den téacs Sacs-Bhéarla;

15 (c) cuirfear an tAirteagal a bhfuil an téacs de leagtha amach i
gCuid 1 den *Sceideal* isteach i ndiaidh Airteagal 42 den
téacs Gaeilge;

20 (d) cuirfear an tAirteagal a bhfuil an téacs de leagtha amach i
gCuid 2 den *Sceideal* isteach i ndiaidh Airteagal 42 den
téacs Sacs-Bhéarla.

2.—(1) An tAonú Leasú is Tríocha ar an mBunreacht a Lua.
thabharfar ar an leasú a dhéantar ar an mBunreacht leis an Acht seo.

(2) Féadfar an tAcht um an Aonú Leasú is Tríocha ar an
mBunreacht (Leanaí), 2012 a ghairm den Acht seo.

SCHEDULE

PART 1

LEANAÍ

Airteagal 42A

- 1 Admhaíonn agus deimhníonn an Stát cearta nádúrtha dochloíte na leanaí uile agus ní foláir dó na cearta sin a chosaint is a shuíomh lena dhlíthe sa mhéid gur féidir é. 5
- 2 1° I gcásanna neamhchoiteanna nuair a tharlaíonn nach ndéanann na tuistí, gan beann ar a stádas pósta, a ndualgais dá gclann sa mhéid gur dócha go ndéanfar dochar do shábháilteacht nó do leas aon linbh dá gclann, ní foláir don Stát, ós é an Stát caomhnóir leasa an phobail, iarracht a dhéanamh, le beart comhréireach mar a shocraítear le dlí, chun ionad na dtuistí a ghlacadh, ag féachaint go cuí i gcónaí, áfach, do chearta nádúrtha dochloíte an linbh. 10 15
- 2° Déanfar socrú le dlí chun aon leanbh a uchtáil i gcás nach ndearna na tuistí a ndualgais don leanbh ar feadh cibé tréimhse ama a ordófar le dlí agus nuair is riachtanas ar mhaithe le barr leasa an linbh é.
- 3 Déanfar socrú le dlí chun aon leanbh a shuíomh go saorálach le haghaidh uchtála agus a uchtáil. 20
- 4 1° Déanfar socrú le dlí go measfar, le linn na n-imeachtaí uile—
 - i a thabharfaidh an Stát, ós é an Stát caomhnóir leasa an phobail, chun nach ndéanfar dochar do shábháilteacht ná do leas aon linbh, nó 25
 - ii a bhaineann le huchtáil, caomhnóireacht nó coimeád aon linbh, nó rochtain ar aon leanbh,a réiteach, gur ní ró-thábhachtach é barr leasa an linbh.
- 2° Déanfar socrú le dlí chun a chur in áirithe, sa mhéid gur féidir é, go ndéanfar sna himeachtaí uile dá dtagraítear i bhfo-alt 1° den alt seo i leith aon linbh ar féidir leis nó léi teacht ar a bharúlacha féin nó ar a barúlacha féin, barúlacha an linbh a fháil agus tromachar cuí a thabhairt dóibh ag féachaint d'aois agus d'aibíocht an linbh. 30

CUID 1

LEANAÍ

Airteagal 42A

- 5 1 Admhaíonn agus deimhníonn an Stát cearta nádúrtha dochloíte
na leanaí uile agus ní foláir dó na cearta sin a chosaint is a shuíomh
lena dhlíthe sa mhéid gur féidir é.
- 10 2 1° I gcásanna neamhchoiteanna nuair a tharlaíonn nach ndéanann
na tuistí, gan beann ar a stádas pósta, a ndualgais dá gclann sa
mhéid gur dócha go ndéanfar dochar do shábháilteacht nó do
leas aon linbh dá gclann, ní foláir don Stát, ós é an Stát
caomhnóir leasa an phobail, iarracht a dhéanamh, le beart
comhréireach mar a shocraítear le dlí, chun ionad na dtuistí a
15 ghlacadh, ag féachaint go cuí i gcónaí, áfach, do chearta
nádúrtha dochloíte an linbh.
- 2° Déanfar socrú le dlí chun aon leanbh a uchtáil i gcás nach
ndearna na tuistí a ndualgais don leanbh ar feadh cibé tréimhse
ama a ordófar le dlí agus nuair is riachtanas ar mhaithe le barr
leasa an linbh é.
- 20 3 Déanfar socrú le dlí chun aon leanbh a shuíomh go saorálach le
haghaidh uchtála agus a uchtáil.
- 4 1° Déanfar socrú le dlí go measfar, le linn na n-imeachtaí uile—
- 25 i a thabharfaidh an Stát, ós é an Stát caomhnóir leasa an
phobail, chun nach ndéanfar dochar do shábháilteacht ná
do leas aon linbh, nó
- ii a bhaineann le huchtáil, caomhnóireacht nó coimeád aon
linbh, nó rochtain ar aon leanbh,
- a réiteach, gur ní ró-thábhachtach é barr leasa an linbh.
- 30 2° Déanfar socrú le dlí chun a chur in áirithe, sa mhéid gur féidir
é, go ndéanfar sna himeachtaí uile dá dtagraítear i bhfo-alt 1°
den alt seo i leith aon linbh ar féidir leis nó léi teacht ar a
bharúlacha féin nó ar a barúlacha féin, barúlacha an linbh a
fháil agus tromachar cuí a thabhairt dóibh ag féachaint d'aois
agus d'aibíocht an linbh.

PART 2

CHILDREN

Article 42A

- 1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws 5
protect and vindicate those rights.
- 2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common 10
good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.
- 2° Provision shall be made by law for the adoption of any child 15
where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.
- 3 Provision shall be made by law for the voluntary placement for 20
adoption and the adoption of any child.
- 4 1° Provision shall be made by law that in the resolution of all proceedings—
 - i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or 25
 - ii concerning the adoption, guardianship or custody of, or access to, any child,

the best interests of the child shall be the paramount consideration.
- 2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or 30
her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child. 35

Article 42A

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with due regard for the natural and imprescriptible rights of
the child.
- 15 2° Provision shall be made by law for the adoption of any child
where the parents have failed for such a period of time as may
be prescribed by law in their duty towards the child and where
the best interests of the child so require.
- 3 Provision shall be made by law for the voluntary placement for
20 adoption and the adoption of any child.
- 4 1° Provision shall be made by law that in the resolution of all
proceedings—
 - i brought by the State, as guardian of the common good, for
the purpose of preventing the safety and welfare of any
25 child from being prejudicially affected, or
 - ii concerning the adoption, guardianship or custody of, or
access to, any child,the best interests of the child shall be the paramount
consideration.
- 30 2° Provision shall be made by law for securing, as far as
practicable, that in all proceedings referred to in subsection 1°
of this section in respect of any child who is capable of forming
his or her own views, the views of the child shall be ascertained
and given due weight having regard to the age and maturity of
35 the child.



**THIRTY-FIRST AMENDMENT OF THE CONSTITUTION
(CHILDREN) BILL 2012**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The Programme for Government committed to holding a Referendum to amend the Constitution in respect of children. The proposed introduction of dedicated provisions for children is in line with the recommendations of many experts over the years, including the report of the Joint Committee on the Constitutional Amendment on Children (2010) and the report of the All Party Oireachtas Committee on the Constitution (2006).

The purpose of the Thirty-first Amendment of the Constitution (Children) Bill 2012 is to expressly recognise children in their own right within the Constitution. Dedicated provisions in our Constitution will give children special protection having regard to their young age and their potential vulnerability.

The provisions contained in the Bill will strongly affirm each individual child's inherent rights. The Bill will enshrine and give firmer recognition to the protection of children under the Constitution while continuing to respect and preserve the rights of the family as set out in the existing Article 41. Article 41 which gives special recognition to the family will be retained in full.

The main features of the Bill will provide for—

- the strengthening of protections for all children and the provision of express rights;
- greater clarity in the State's role in protecting children where parents are failing;
- the making of laws regarding adoption where the parents of a child have either failed in their duty towards that child or wish to voluntarily place the child for adoption;
- the making of laws regarding consideration of the best interests of the child and the views of the child in proceedings brought by the State to protect any child or proceedings concerning adoption, guardianship, custody of or access to any child; and
- no discrimination between children based upon the marital status of their parents when it comes to child care proceedings, family law proceedings, access to adoption and consideration of their best interests and views.



AN BILLE UM AN AONÚ LEASÚ IS TRÍOCHA AR AN mBUNREACT (LEANÁI), 2012

MEABHRÁN MÍNITHEACH

Cuspóir an Bhille

Gealladh sa Chlár Rialtais go seolfaí Reifreann chun an Bunreacht a leasú maidir le leanaí. Tá sé i gcomhréir le moltaí a rinne cuid mhór saineolaithe i rith na mblianta forálacha tiomnaithe a thabhairt isteach, mar a bheartaítear, le haghaidh leanaí, lena n-áirítear an tuarascáil ón gComhchoiste um an Leasú Bunreachta maidir le Leanaí (2010) agus an tuarascáil ón gCoiste Uile-Pháirtí Oireachtais ar an mBunreacht (2006).

Is é an cuspóir atá leis an mBille um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí), 2012 leanaí a aithint as a gceart féin sa Bhunreacht. Tabharfar cosaint speisialta do leanaí le forálacha tiomnaithe i mBunreacht na hÉireann, ag féachaint dá n-óige agus don tsoghontacht a d'fhéadfadh a bheith ag baint leo.

Déanfar, leis na forálacha atá sa Bhille, cearta dúchasacha an uile linbh aonair a dheimhniú go daingean. Déanfar, leis an mBille, cosaint leanaí a chumhdach, agus aitheantas níos daingne a thabhairt di, faoin mBunreacht ach leanfar san am céanna de chearta an teaghlaigh mar atá leagtha amach in Airteagal láithreach 41 a urramú agus a chaomhnú. Déanfar Airteagal 41, ina dtugtar aitheantas speisialta don teaghlach, a choinneáil ina iomláine.

Déanfar socrú leis na príomhghnéithe den Bhille maidir leis na nithe seo a leanas—

- bearta cosanta le haghaidh na leanaí uile a neartú agus cearta sainráite a chur ar fáil;
- ról níos soiléire ag an Stát maidir le leanaí a chosaint i gcásanna nach bhfuil a ndualgais á ndéanamh ag tuistí;
- dlíthe a dhéanamh maidir le huchtáil nuair nach ndearna tuistí linbh a ndualgais don leanbh sin nó nuair is mian leo an leanbh a shuíomh go saorálach lena uchtáil nó lena huchtáil;
- dlíthe a dhéanamh maidir le haird a thabhairt ar bharr leasa an linbh agus ar bharúlacha an linbh in imeachtaí a thabharfaidh an Stát chun aon leanbh a chosaint nó in imeachtaí a bhaineann le huchtáil, caomhnóireacht nó coimeád aon linbh, nó rochtain ar aon leanbh; agus
- gan idirdhealú a dhéanamh ar leanaí bunaithe ar stádas pósta a dtuistí nuair a bhíonn imeachtaí cúraim leanaí, imeachtaí dlí teaghlaigh, rochtain ar uchtáil agus aird ar bharr leasa nó ar bharúlacha leanaí i gceist.

Provisions of the Bill

A new Article 42A is to be inserted as a new Article after Article 42.4.

The Bill provides for the repeal of Article 42.5 of the Constitution. Article 42.5 provides that the State may, in exceptional circumstances, by appropriate means supply the place of parents when those parents for physical or moral reasons have failed in their duty towards their child. The Bill re-words Article 42.5 and places it within the new Article 42A. In the revised language, the focus is on the safety and welfare of children which is not currently referenced in the existing Article 42.5.

Section 1 provides for the repeal of Article 42.5 of the Constitution and the insertion of a new Article 42A after Article 42.

Section 2 states that the amendment of the Constitution effected by this Act shall be called the Thirty-first Amendment of the Constitution and that the Act may be cited as the Thirty-first Amendment of the Constitution (Children) Act 2012.

Schedule

The Schedule contains the proposed text of the new Article 42A to be inserted after Article 42.

*Department of Children and Youth Affairs,
September, 2012.*

Forálacha an Bhille

Beidh Airteagal nua 42A le cur isteach mar Airteagal nua i ndiaidh Airteagal 42.4.

Déantar socrú leis an mBille chun Airteagal 42.5 den Bhunreacht a aisghairm. Déantar socrú le hAirteagal 42.5 go bhféadfaidh an Stát, i gcásanna neamhchoiteanna, le beart oiriúnach, ionad tuistí a ghlacadh nuair nach ndearna na tuistí sin, ar chúiseanna corpartha nó ar chúiseanna morálta, a ndualgais dá gclann. Leis an mBille, cuirtear focail eile ar Airteagal 42.5 agus suíonn sé é laistigh d'Airteagal nua 42A. Dirítear leis an bhfoclaíocht nua ar shábháilteacht agus ar leas leanaí, ar nithe iad nach dtagraítear dóibh faoi láthair in Airteagal láithreach 42.5.

Déantar socrú le *halt 1* chun Airteagal 42.5 den Bhunreacht a aisghairm agus chun Airteagal nua 42A a chur isteach i ndiaidh Airteagal 42.

Luaitear in *alt 2* gurb é an tAonú Leasú is Tríocha ar an mBunreacht a thabharfar ar an leasú ar an mBunreacht a dhéantar leis an Acht seo agus go bhféadfar an tAcht um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí), 2012 a ghairm den Acht.

An Sceideal

Leagtar amach sa Sceideal téacs beartaithe Airteagal nua 42A, a bheidh le cur isteach i ndiaidh Airteagal 42.

*Roinn An Leanaí agus Gnóthaí Óige,
Meán Fómhair, 2012.*